IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10273 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KP JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10273 of 2000
   MR PV HATHI for Petitioner No. 1
   MS REETA CHANDARANA, ASSTT.GOVERNMENT PLEADER
   for Respondent No. 1-2
   RULE SERVED for Respondent No. 3-4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 11/10/2004

ORAL JUDGEMENT

The petitioner has in the present petition prayed for a declaration that the Government Resolution of the Education Department dated 29.6.1998, in so far as the

same provides that pay revision was applicable only to those Demonstrators who reached the scale of Rs. 2,700/-- after 15.2.1992 is void, ineffective and inoperative. It is also prayed in the alternative for a declaration that the said Resolution dated 29.6.1998 cannot have application to the petitioner since he had already retired when the said Resolution was issued. The petitioner has also prayed for release of his gratuity, which the respondents have withheld on account of the said Resolution dated 29.6.1998.

2. Some facts needed to decide the issues arising in this petition can be noted at the outset. The petitioner was appointed on 6.7.1964 as a Demonstrator at Bahauddin College, Junagadh, which is a Government college. He thereafter worked in the said capacity in different Government colleges at different places.

3. By resolution dated 14.9.1988, the Government sanctioned the pay-scale for the post of Demonstrators of Rs. 1740-3000 with effect from 1.1.1986, in place of pre-revised pay-scale of Rs. 500-900.

4. By resolution dated 20.11.1992, University Grants Commission (hereinafter referred to as "the UGC")sanctioned higher grade of Rs. 2200-4000 for those Demonstrators/Tutors who have to stay in the scale of Rs. 1740-3000 and who have reached the revised scale of Rs. 2700/- (basic pay) without any change in the designation and duties. It was provided that the posts will automatically stand abolished when vacated by such Demonstrators/Tutors.

5. The background for adopting the said Resolution is to be found in the Resolution dated 20.11.1992 itself. It appears that the UGC accepted the advice of the Government and agreed that the Demonstrators and Tutors who possess the minimum qualification as prescribed by the UGC for appointment to the post of lecturer i.e. Masters degree in relevant subjects with atleast 50% marks and good academic record, may be considered for appointment against vacant posts of Lecturers and it was provided that the existing incumbents appointed prior to March, 1974 may not have to qualify in the eligibility test conducted by the UGC and the eligible Demonstrators/Tutors shall be recruited through a process of Selection Committee. It was however, provided that service rendered as Demonstrator/Tutor shall not count for career advancement. In this background, it was further provided that those Demonstrators/Tutors who have to stay in the scale of Rs. 1740 - 3000 and have reached

revised scale of Rs. 2700 of basic pay shall be granted, on crossing of Efficiency Bar, a personal pay of Rs. 2200-4000, equivalent to that of Lecturer, without any change in the designation and duties and that the posts will automatically stand abolished when vacated.

It may be noted that the petitioner has stated in the petition and about which no dispute has been raised that Demonstrators and Tutors had no promotional avenues.

6. Thus, the said Circular appears to have been issued to mitigate the hardships faced by the Demonstrators/Tutors for want of any career advancement, since there was no promotional avenues available to them. It therefore appears that the UGC on one hand tried to accommodate eligible and meritorious Demonstrators/Tutors on the post of Lecturers while also by some extent mitigating their difficulties by granting them higher scale as personal pay and decided to place them in the scale of Rs. 2200-4000, provided the person concerned had reached the scale of Rs. 2700 basic in his scale of Rs. 1740-3000.

7. Following the pattern of the UGC, the State Government also issued a Resolution on 11.1.1994 and decided to grant similar benefits to those Demonstrators/Tutors and provided that those Demonstrators and Tutors working in colleges and are in the pay-scale of Rs. 1740 - 3000, on reaching the pay of Rs. 2,700/-, will be given a personal pay on the crossing of Efficiency Bar in the scale of Rs. 2200-4000 and the designation and duties will not undergo any change and that the posts occupied by them will automatically stand cancelled when the same fall vacant.

8. It is not in dispute that the petitioner received the benefits of the said Circular of the Government dated 11.1.1994 and his pay was actually fixed in the higher scale of Rs. 2200-4000. The petitioner has produced at Annexure "G" to the petition, a copy of the order dated 22.4.1995, by which the Government was pleased to place the petitioner in the scale of Rs. 2200-4000 as per the Government Resolution dated 11.1.1994.

9. By subsequent Resolution dated 29.6.1998, the Government was pleased to clarify that the benefit of the earlier Circular dated 11.1.1994 will apply to only those Demonstrators/Tutors who reached the pay of Rs. 2700 after 1.10.1992. The said Resolution dated 29.6.1998 reads as follows:-

"RESOLUTION -- As per the Resolution on the subject referred to above, it has been resolved to sanction the pay scale of Rs. 2200 - 4000 to Tutors/Demonstrators on their reaching the pay of Rs. 2700/- in the scale of Rs. 1740 - 3000 on their crossing Efficiency Bar. In this behalf it is further clarified that the benefit of this provision will apply only to those who reach the pay of Rs. 2700/- after 1.10.1992.

2. The other provisions of the said Resolution will remain the same.

3. These orders are passed after taking concurrence on 16.5.1998 of the Finance Department on the file of even number of this Department.

By order and in the name of the
Governor of Gujarat."

10. Pursuant to the said Government Resolution dated 29.6.1998, the Government was pleased to pass a fresh order dated 27.7.2000, withdrawing the benefit of higher pay-scale from the petitioner and refixing and recalculating pay.

11. It may be noted that the petitioner retired on reaching the age of superannuation with effect from 31.10.1996.

12. The petitioner has challenged the said Resolution of the Government dated 29.6.1998 and contended that the said Resolution could not have operated with retrospective effect so as to take away the benefits received by the petitioner, especially when the petitioner had already retired from service with effect from 31.10.1996.

13. The petitioner has also challenged the said Resolution dated 29.6.1998 as arbitrary and violative of Articles 14 and 16 of the Constitution of India, inasmuch as it provides that the benefits of higher payscale would be available to only those Tutors and Demonstrators who reached the pay scale of Rs. 2700 (basic) after 1.10.1992. It is submitted that there is no reason for drawing the cut-off line of 1.10.1992 and the said cut-off date is arbitrary and unjust.

14. The respondents have filed an affidavit-in-reply in which it is contended that in view of the Circulars

issued by the Government, the petitioner is not entitled to receive the pay-scale of Rs. 2200 - 4000. It may be noted that the Government affidavit is completely silent on the aspect of the validity of the said Circular as questioned by the petitioner. No averments have made in the affidavit-in-reply pointing out the relevance of cut-off date of 1.10.1992, as found in the GR dated 29.6.1998.

15. In the Government Resolution dated 11.1.1994, the Government has not indicated any reason for grant of higher pay-scale of Rs. 2200 - 4000 to Demonstrators and Tutors upon their reaching the stage of Rs. 2700/(basic pay) in the existing scale of Rs. 1740-3000. However, it is stated that the UGC has already adopted the said standards and the Government having considered the question of grant of higher pay-scale to the Tutors and Demonstrators, above decision is taken. Therefore, if we examine the Resolution of the UGC of 20th November, 1992, the reason for which the said scale was given to the said Demonstrators and Tutors would be clear. As noted above, the intention was to mitigate the difficulties faced by the Tutors and Demonstrators by considering them for appointment to the post of Lecturers by relaxing some of the rigours and simultaneously it was also decided that those of the Demonstrators and Tutors who have reached the stage of Rs. 2700 (basic pay) in the scale of Rs. 1740 - 3000 upon crossing of E.B should be granted by way of personal pay the scale of Rs. 2200 - 4000, which is equivalent to that of Lecturer, without any change in the designation and duties and that the post will automatically stand abolished when vacated by the incumbent.

16. If this is the purpose and philosophy for granting the higher pay-scale, can it be said that the condition imposed by the Government that higher pay-scale will be available only to those Tutors and Demonstrators who reached the stage of Rs. 2700 in the pay-scale of Rs. 2200 - 4000 after 1.10.1992 in subsequent Resolution dated 29.6.1998, fulfils such purpose?

17. In light of these facts, we have to examine the validity of the said condition imposed by the Government in its Circular dated 29.6.1998.

18. In the decision of the Hon'ble Supreme Court, in the case of D.S. Nakara Vs. Union of India, reported in AIR 1983 SC 130, the Hon'ble Supreme Court made following observations in paragraph 11:-

"11. The decisions clearly lay down that though Art. 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (see Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Others.(1) The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure."

19. In the decision of the Hon'ble Supreme Court in Ashutosh Gupta Vs. State of Rajasthan and ors., reported in (2002) 4 SCC 34, the apex Court once again reiterated that though the State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with, in order to pass the test of permissible classification, two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and (ii) that that differentia must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act. When a law is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and the object of the Act, the court has to apply a dual test in examining the validity, the test being, whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group, and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects.

20. In the decision of the Hon'ble Supreme Court in the case of Sansar Chand Atri Vs. State of Punjab and anr. reported in (2002) 4 SCC 154, the apex Court has made following observations in paragraph 9:-

> "..... All the ex-defence service personnel are to be treated as a class separate from other candidates for the purpose of offer of jobs and no differentiation or discrimination can be made amongst them unless such differences are real and substantial. Testing the provisions in this context we are of the view that a person in the army who has earned pension after putting in the requisite period of service before leaving the army whether at his own request or on being released by the employer or on any ground should be treated as an ex-serviceman who has retired from the army. Such treatment is to be meted out to all such persons irrespective of whether the nomenclature used is "relieved" or "discharged" or "retired". If the contention raised on behalf of the Service Commission and the State Government that since the appellant has been discharged from the army at his own request, he cannot be treated as an ex-serviceman, is accepted then it will create a class within a class without rational basis and, therefore, becomes arbitrary and discriminatory. It will also defeat the purpose for which the provision for reservation has been made."

21. In view of the above decision of the Hon'ble Supreme Court, one has to consider whether the condition imposed in the said Circular dated 29.6.1998 would satisfy the twin test, namely whether the same is based on intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and whether that differentia has a rational relation to the object sought to be achieved by the Policy. So far as the first condition is concerned, there can be hardly any difficulty and obviously by drawing the cut-off date of 1.10.1992, the Government has specified two distinct classes of Tutors and Demonstrators, namely those who have reached the basic pay of Rs. 2,700/- on or before 1.10.1992, and those who have reached the said scale after 1.10.1992. The distinction is clear and intelligible and distinguishes two different sets of Tutors and Demonstrators. So far as the first condition is concerned, there is therefore, hardly any difficulty in arriving at the conclusion that

well defined classes have been grouped in the said Government Resolution by introducing the condition of having reached scale of 2,700/- after 1.10.1992 for being eligible to receive the higher pay-scale of Rs. 2200 4000. The crucial question however is whether the said condition can be said to be one that creates the differentia which has a rational relation and nexus to the object sought to be achieved. As noted earlier, the purpose behind granting higher pay-scale to the Tutors and Demonstrators obviously was to mitigate the difficulties faced by them on account of the fact that they did not enjoy any promotional avenues. If that was the purpose behind introducing the scheme for granting higher pay-scale upon reaching a certain stage in the existing pay-scale, would that purpose be served when Demonstrators and Tutors who reached the scale before 1.10.1992 are kept out of the zone of consideration for grant of higher scale and by treating only those Tutors and Demonstrators who reached the stage of Rs. 2,700 after 1.10.1992 as eligible to receive higher scale? The distinction sought to be drawn by the Government though creates well defined classes, the cut-off line is wholly arbitrary since the differentia has no real nexus with the purpose of granting higher scale. All Demonstrators and Tutors who reach the scale of Rs. 2700 (basic) in the pay-scale of Rs. 1700 - 3000 form a homogeneous class and it is thereafter not posible to create further class within class by introduction of cut-off date of 1.10.1992 and by providing that only those Demonstrators/Tutors who reach the stage of Rs. 2700 (basic pay) after the said cut-off date would be entitled to receive the higher pay scale. Such a classification is without any basis and is therefore arbitrary and discriminatory.

22. Normally those Tutors and Demonstrators who have reached the scale of Rs. 2,700/- before 1.10.1992 would be senior to those Tutors and Demonstrators who would reach the said stage after 1.10.1992. By introducing the above condition and thereby introducing the cut-off date of 1.10.1992, the Government has created a situation whereby the senior Tutors and Demonstrators would remain in the lower scale whereas their junior colleagues would be placed in the higher pay-scale of Rs. 2200 - 4000. No reason is forthcoming for introducing such a condition which would bring about such an anomalous situation. In service jurisprudence ordinarily when senior draws less pay than the junior, such anomalies are rectified by granting stepping up of pay of the senior subject to certain conditions being fulfilled. Here is the case where the Government by its own Resolution has introduced

a cut-off date, which would lead to anomalous situation where the senior Demonstrators and Tutors would languish in the lower scale, whereas the junior colleagues would enjoy the benefit of higher pay-scale of Rs. 2200 4000. On this count also since no justification has been provided by the Government, I find that the condition imposed in the impugned Government Resolution dated 29.6.1998 is wholly arbitrary and unreasonable and violative of Articles 14 and 16 of the Constitution of India.

23. In view of the above conclusion, I need not go into the subsidiary question namely - that even if the condition imposed by the impugned Resolution dated 29.6.1998 is valid, it could not have operated with retrospective effect so as to disentitle the petitioner from retaining the benefit of higher pay-scale already granted to him and on such pay-scale he had already superannuated.

24. Without deciding the issue, I may also note that it is highly debatable whether such a condition could have been imposed by the Resolution dated 29.6.1998 from the very inception in the guise of issuing a clarification, when a condition is added which was not there in the earlier Resolution dated 11.1.1994 and such condition could not have been termed as a clarification of the earlier Resolution.

25. In the result, I find that the Government Resolution dated 29.6.1998 at Annexure "H" is illegal, unlawful and the same is therefore, quashed and set aside.

26. In view of the above conclusions, having quashed the Resolution dated 29.6.1998, I find that the respondents erred in seeking to refix the pay of the petitioner by order dated 27.7.2000. Since the order dated 27.7.2000 is based only on the Circular dated 29.6.1998, the same is also quashed and set aside and accordingly, respondents are directed to refix the pension of the petitioner from the very inception ignoring the order dated 27.7.2000 and pay arrears thereof. The with-held gratuity of the petitioner also shall be released and paid over to the petitioner. The above exercise be completed within a period of eight weeks from the date of receipt of the order. The arrears of pension and with-held gratuity shall carry a simple interest at the rate of 8 per cent per annum from the date it became due and payable, till the same is actually paid.

27. With the result, petition is allowed. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas